

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 19 December 2023**

**Case Number:** T 0755/21 - 3.3.03

**Application Number:** 11708669.4

**Publication Number:** 2580279

**IPC:** C08L23/08, B32B27/32, C08J5/18

**Language of the proceedings:** EN

**Title of invention:**

ETHYLENE-BASED POLYMER COMPOSITIONS FOR USE AS A BLEND  
COMPONENT IN SHRINKAGE FILM APPLICATIONS

**Patent Proprietor:**

Dow Global Technologies LLC

**Opponent:**

Borealis AG

**Relevant legal provisions:**

EPC Art. 101, 111(1), 113(2)

**Keyword:**

Basis of decision - text or agreement to text withdrawn by  
patent proprietor - patent revoked



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 0755/21 - 3.3.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.03**  
**of 19 December 2023**

**Appellant:** Borealis AG  
(Opponent) Trabrennstrasse 6-8  
1020 Vienna (AT)

**Representative:** Maiwald GmbH  
Elisenhof  
Elisenstraße 3  
80335 München (DE)

**Respondent:** Dow Global Technologies LLC  
(Patent Proprietor ) 2040 Dow Center  
Midland, MI 48674 (US)

**Representative:** Boulton Wade Tennant LLP  
Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
29 March 2021 concerning maintenance of the  
European Patent No. 2580279 in amended form.**

**Composition of the Board:**

**Chairman** D. Semino  
**Members:** M. Barrère  
R. Cramer

## **Summary of Facts and Submissions**

- I. This decision concerns the appeals filed initially by the patent proprietor and the opponent against the decision of the opposition division concerning maintenance of European Patent No. 2 580 279 in amended form on the basis of the claims of auxiliary request 3A (renumbered as auxiliary request 5 in the decision) filed with letter of 12 January 2021 and an adapted description.
  
- II. On 19 December 2023 oral proceedings were held before the Board. Following a discussion on sufficiency of disclosure, the patent proprietor withdrew their appeal and all requests on file and stated that they no longer approved the text of the patent in any form (see minutes of the oral proceedings, page 2, penultimate paragraph).
  
- III. The opponent requested that the decision be set aside and the patent be revoked.

## **Reasons for the Decision**

1. Article 113(2) EPC requires that the European Patent Office shall decide upon the European patent only in the text submitted to it and agreed on by the proprietor of the patent.
  
2. Agreement cannot be deemed to be given if the proprietor withdraws all requests on file and expressly states that they no longer approve the text of the patent in any form.

3. In the present situation, where there is no text of the patent on which basis the Board can consider the appeal of the opponent, the only possibility available to the Board is to revoke the patent as envisaged in Articles 111(1) together with 101 EPC. In this context, reference is made to the Case Law of the Boards of Appeal of the EPO (point IV.D.2 of the 10<sup>th</sup> edition dated 2022) and the decisions cited therein.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



A. Pinna

D. Semino

Decision electronically authenticated